IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7961 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHARAM PRAKASH GUPTA

Versus

O N G C

Appearance:

MR NILESH A PANDYA for Petitioner

MS KJ BRAHMBHATT for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 11/08/2000

ORAL JUDGEMENT

The petitioner seeks a direction on the respondent, Oil & Natural Gas Commission to promote the petitioner to the post of Chief Store Keeper with effect from May, 1980, instead of 1st April, 1982, and to the

higher post of Store and Purchase Officer from 1st October, 1982 and on that basis to further promote him to the post of Deputy Director (Stores and Purchase) with effect from 1st January, 1989. According to the petitioner, if he is given promotion with effect from May, 1980, instead of 1st April, 1982 to the post of Chief Store Keeper, he will become entitled to such further promotions.

2. The case of the petitioner is that he had joined the Oil and Natural Gas Commission on 19th July, 1962 and was promoted as Store Keeper Grade-I in the year 1967. He continued to serve as Store Keeper Grade-I till 1982, when he was promoted as Chief Store Keeper w.e.f. 1-4-1982. It is the petitioner's case that his juniors were promoted to the post of Chief Store Keeper w.e.f. May 1980, but the petitioner did not make a grievance at that time, because he could not qualify the test conducted in the year 1980. It is, however, submitted that subsequently the respondent Commission promoted a large number of employees without their having passed the trade test by imposing a condition that such employees will have to pass the trade test within six months of their appointment. Even that condition was not adhered to and such employees were allowed to continue as Chief Store Keeper even beyond the period of six months. Those who were promoted with such condition that `they should pass the trade test within six months', were juniors to the petitioner and they qualified only in the year 1985-86. It is also the grievance of the petitioner that at the time when he was required to pass the trade test, the minimum passing standard was 50% which was reduced to 33% in the year 1985-86. It is alleged that this was done with a view to favour those employees who were promoted in the year 1982 with the condition of passing the trade test within six months and who could not pass the same till 1985-86, so that they could clear it by virtue of lowering the passing standard from 50% to 33%. Thus, those who passed the trade test later on were given promotion with retrospective effect. This is how, according to the petitioner, he was discriminated against. According to the petitioner, he had made representation which was partly accepted and the petitioner came to be given seniority from 1-4-1982. After his being promoted from 1-4-1982 as Chief Store Keeper, he became eligible for promotion to the post of Store and Purchase Officer on his completing six years i.e. in 1988. But his case was not considered, while his juniors were promoted to the post of Store and Purchase Officer in 1988-89 and were given deemed date of 1-1-1985.

3. The Learned Counsel appearing for the petitioner contended that the petitioner was discriminated against, because the persons who had passed the trade test later on were given promotion on retrospective basis as well as those who had not passed trade test were promoted as Chief Store Keepers with a condition that they should clear the trade test within six months. It was argued that even the petitioner should be given promotion from an earlier date i.e in May, 1980, though he had passed the trade test thereafter, so that he could be meted out an equal treatment.

4. It will be seen that the petitioner had made representations seeking promotion from May 1980 to the post of Chief Store Keeper. The petitioner was promoted by an order dated 19-10-1981 at Annexure "A" to the petition, as Chief Store Keeper in a temporary capacity until further orders. He was to be on probation for a period of one year from the date he took charge of the post and his continuance on the post depended upon the satisfactory performance of his duties. It appears that he made a representation on 16th July, 1983 and another one on 2nd October, 1983 for being given promotion w.e.f. 1st April, 1981. His representations were not accepted as is clear from the order dated April 9, 1984 at Annexure "B" to the petition, in which it was stated that his promotion cannot be made effective from 1st April, 1981 as stated by the petitioner in his applications. However, his promotion was made effective from 1st April, 1982 by the office order dated 2nd September, 1983 and his seniority in the cadre of Chief Store Keeper was correctly circulated by the office order dated 25th August, 1983. It appears that the petitioner again made a representation, to which the respondent-authority, by the letter dated 18-7-1987 at Annexure "C" to the petition, replied that his case was re-examined, and it was because the petitioner could not qualify in the trade test, which was held in May, 1980, which was a prerequisite for considering one's candidature for promotion to the next higher post, he could not be considered for promotion in the year 1980. It was stated that the junior colleagues, who had passed trade test were promoted accordingly. It was further stated that in the year 1981, the petitioner qualified his trade test and was given promotion as Chief Store Keeper w.e.f. 1-4-1982 along with his junior colleagues, although he joined later on 22-8-1982. It was also stated that he was not eligible for consideration for further promotion even by reckoning his experience as Chief Store Keeper from 19-10-1981 i.e. the date of issue of promotion

orders of Chief Store Keeper.

4. It is not disputed that passing the trade test was a prerequisite for considering one's candidature for promotion at the relevant time i.e. May, 1980, from when the petitioner has claimed to be promoted. The petitioner having not qualified at the trade test could not have been promoted at that time. If the criteria is relaxed thereafter by lowering the standard or if the policy is changed by giving promotion on temporary basis, imposing a requirement of passing the trade test within the stipulated time or even if on account of exigency of service, such time is extended, the petitioner cannot claim any benefit of such subsequent changes in the context of the period when it was a prerequisite to pass trade test for becoming eligible for promotion. Subsequent changes in the policy will not invalidate the policy that had been adopted earlier, and it is not the case of the petitioner that in May, 1980 when passing the trade test was a prerequisite, any variations were made, which can be termed as discriminatory against the petitioner. The petitioner has not impleaded, any subsequent promotees on the basis of whose promotions he has made the grievances, as parties to this petition.

5. The petitioner having failed to establish any right of being promoted from May, 1980, obviously, cannot compute his promotion prospects on that basis. As stated in the letter dated 18th July, 1987, the petitioner was not eligible for promotion to the higher post as claimed on the basis of his experience on the post of Chief Store Keeper, to which he was promoted from 1-4-1982. Therefore, the claim of the petitioner is wholly misconceived. The petition is, therefore, rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

11-8-2000 (R.K. Abichandani, J.)

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